MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL

November 13, 1920

Pursuant to the call of the Chairman, the Executive Council of the American Society of International Law met at No. 2 Jackson Place, N. W., Washington, D. C., at ten o'clock a. m., on Saturday, November 13, 1920.

Present:

Mr. CHANDLER P. ANDERSON	Prof. WILLIAM R. MANNING
Mr. JOHN BARRETT	Mr. JACKSON H. RALSTON
Mr. FREDERIC R. COUDERT	Mr. ELIHU ROOT
Judge GEORGE GRAY	Mr. JAMES BROWN SCOTT
Mr. CHARLES NOBLE GREGORY	Admiral CHARLES H. STOCKTON
Mr. CHARLES CHENEY HYDE	Mr. OSCAR S. STRAUS
Mr. ROBERT LANSING	Mr. LESTER H. WOOLSEY

Mr. GEORGE A. FINCH, Assistant Secretary, was also in attendance.

Mr. STRAUS, Chairman of the Council, presided.

Letters of regret were presented from Messrs. Charles Henry Butler, J. M. Dickinson, Amos S. Hershey, David Jayne Hill, John H. Latané, William W. Morrow, L. S. Rowe, James L. Slayden, Everett P. Wheeler, George G. Wilson and Theodore S. Woolsey.

Chairman STRAUS. Gentlemen, we are very fortunate in having back with us one of our earliest members (Mr. Lansing) who has not been with us recently by reason of his official position of Secretary of State. We most heartily welcome him back this morning.

We also take pride in the fact that our President (Mr. Root), in the line with the spirit of the American Society of International Law, has performed one of the most constructive pieces of work that has ever fallen to any man in modern times—to assist in the project of a permanent court of international justice. We take special pride in that, and we believe that his presiding over our Society for so many years has added additional equipment to his capacity which enabled

him to perform this work with such distinction for our country and for our Society.

The RECORDING SECRETARY (Mr. Scott) read the notice of the meeting. He also read the minutes of the meeting of the Executive Committee of January 24, 1920.[1]

[During the reading of the minutes].

Mr. ROOT. With reference to the Spanish edition of the JOURNAL, I think you ought to explain, Doctor Scott, just what the arrangement has been with the Carnegie Endowment. I am quite sure there are members of the Council who are not familiar with it.

Secretary SCOTT. An application was made to the Endowment to issue, at its expense, a Spanish edition of the AMERICAN JOURNAL OF INTERNATIONAL LAW. That has been done regularly since 1912. The expenses are very considerable inasmuch as a translation has to be made and each number of the JOURNAL and the proceedings printed. All of those expenses are met by the Endowment. Some 250 members throughout Latin-America subscribe regularly, and in order that the Spanish edition may fulfill its useful purpose, a large free list, made up principally of the ministries of foreign affairs and libraries in Central and South America, is supplied with the JOURNAL. Under the original arrangement, the proceeds of Spanish membership fees and subscriptions were turned over to the Endowment to be applied to the cost of publication, but the Executive Committee of the Society at its last meeting, requested the Endowment to allow the Society to retain these proceeds in order to help out with the present increased cost of publishing the English edition of the JOURNAL. The Endowment has generously complied with that request.

Mr. ROOT. I do not think you can be too clear in making your explanation about the new arrangement with the publishers for the publication of the JOURNAL.

Secretary SCOTT. The new contract is that instead of sharing with the publishers as heretofore three-fifths of the membership dues of five dollars annually, the increased cost of printing and paper required an increase, so that four-fifths of the annual dues now go to the publishers and only one-fifth remains with us. Therefore, instead of receiving two dollars of the annual dues of five dollars, we now receive only one dollar.

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[1] Printed, *infra*, p. 36.

In addition, instead of issuing the supplement of official documents under a separate cover, the publishers stated that it would reduce considerably the cost if it were sent out under the same cover as an appendix, but separately sewed and separately paged so that it could be detached at the end of the year and separately bound. In the final analysis, the JOURNAL will be the same as heretofore at the end of the year when separately bound, and the supplement will be the same as heretofore at the end of the year when separately bound.

The other term of the conditions proposed by the publishers was that there should be a limited amount of advertising on the cover of the JOURNAL. Hitherto there has been no advertising of any kind, merely a blank page. This proposal was agreed to, as you will see from the resolutions just read, with the result that the publishers now advertise their various publications dealing with international law, political science, and government, on the inside page of the front cover, and on both sides of the last cover.

[The reading of the minutes was concluded].

Chairman STRAUS. Gentlemen, you have heard the reading of the minutes of the meeting of the Executive Committee. What is your pleasure?

Mr. ROOT. I move that the actions of the Executive Committee exhibited by these minutes be approved by the Executive Council.

The motion was agreed to.

REPORTS OF OFFICERS

The TREASURER (Hon. Chandler P. Anderson) submitted the following report:

TREASURER'S REPORT

JANUARY 1 TO DECEMBER 31, 1919

INVESTMENT STATEMENT OF LIFE MEMBERSHIP DUES

RECEIPTS.

Life membership dues, 29 life members at $100 each		$2,900.00

INVESTMENTS.

June 23, 1916.	1 $500 Central Pacific first mortgage 4% bond at 102 with commissions	$510.63	
Dec. 21, 1906.	1 $500 Central Pacific first mortgage 4% bond at 100½ with commissions	503.73	
Nov. 14, 1907.	1 $500 Central Pacific first mortgage 4% bond at 90 with commissions	451.08	
July 2, 1908.	1 $500 Central Pacific first mortgage 4% bonds at 97½ with commissions	486.75	
Mar. 13, 1917.	1 $500 Central Pacific first mortgage 4% bond at 90 with commissions	452.95	2,405.14
Dec. 31, 1919.	Balance on deposit at Riggs National Bank...		$494.86

INVESTMENT FROM INCOME ACCOUNT.

May, 1918.	$5,000 U. S. Third Liberty Loan Bonds, 4¼%.....	$5,000.00

PRINCIPAL ACCOUNT

Jan. 1, 1919.	Balance on deposit at Riggs National Bank.....	$394.86
	1 life membership dues.....	100.00
Dec. 31, 1919.	Balance on deposit at Riggs National Bank.....	$494.86

INCOME ACCOUNT

RECEIPTS

Balance on deposit at Union Trust Company, carried forward from last account			$1,727.80
Balance on deposit at Riggs National Bank, carried forward from last account			2,811.40
Annual dues	1917	$5.00	
	1918	430.00	
	1919	4,005.00	
	1920	136.00	
	1921	17.00	4,593.00
Foreign postage	1918	$12.00	
	1919	68.01	
	1920	5.00	85.01
Exchange on checks			.24
Income from investment life membership dues (5 Central Pacific R. R. Co. $500 4% bonds)			100.00
Interest: Coupons, $5,000 Third Liberty Loan		$287.00	
	Riggs National Bank	123.35	
	Union Trust Company	52.30	462.65
Special Supplement for 1919			8,400.00
Special Supplement for 1916			1.20
Sale of Proceedings			27.20
			$18,208.50

DISBURSEMENTS

Salary account:			
George A. Finch, Secretary of Board of Editors and Business Manager	$1,200.00		
H. K. Thompson, Assistant to Treasurer	300.00		
Wilbur S. Finch, account clerical assistance for Recording Secretary and Editor-in-chief	300.00	$1,800.00	
Secretary's disbursements:			
Postage, telegrams, express, etc.		51.45	
Treasurer's disbursements:			
Postage, telegrams, express, etc.		5.46	
Printing membership lists		55.50	
Stationery—Byron S. Adams		175.25	
Journal:			
Preparation:			
Ruth E. Stanton	$35.00		
Wilbur S. Finch	90.00		
Kathryn Sellers	75.00	200.00	
Annual meeting:			
Reporting—James R. Wick		68.00	
Special Supplement:			
Printing	$7,594.58		
Postage and cartage	485.81		
Preparation:			
Geo. A. Finch	$150.00		
Ethel S. Nock	10.00	160.00	8,240.39
Proceedings:			
Printing	$648.00		
Postage, etc.	101.82	749.82	
Furniture account:			
Bookbinding, Warneson & Co.	$47.75		
Harvard Law Review	1.75		
Yale Law Review	6.00		
Review Publishing Co.	4.50	60.00	11,405.87
Balance December 31, 1919			$6,802.63
Balance at Union Trust Company	$1,780.10		
Balance at Riggs National Bank	5,022.53		
			$6,802.63

Upon motion, the Treasurer's report was ordered to be received and referred to the Auditing Committee.

Upon recommendation of the TREASURER the following resolution was then adopted:

Resolved, That the Treasurer be and he is hereby authorized to invest in short term 5¾ per cent Government notes such bank balances as may not be needed for current expenses.

Upon motion, the Executive Council approved the payment of the following necessary expenses incurred by the Business Manager: Proofreading $22.38; printing advertising literature $17.95 in excess of amount previously authorized; overtime work by the publishers amounting to $70.00 in expediting the appearance of the October, 1920, number of the JOURNAL.

Secretary SCOTT reported that as the result of the advertising campaign undertaken by direction of the Executive Committee, about 250 new members had been added to the rolls of the Society.

He then reported the death of Mr. Alpheus H. Snow, a member of the Council. Upon motion, Mr. Charles Noble Gregory was appointed to draft a resolution on the death of Mr. Snow. The following resolution was subsequently reported by him and unanimously adopted:

RESOLUTION ON THE DEATH OF MR. SNOW

The Council having been advised of the death of Alpheus Henry Snow, Esquire, in the City of New York on the 19th of August, 1920, it was, on motion, by unanimous vote,

Resolved, That the members of the Executive Council of the American Society of International Law have heard, with sincere sorrow of the untimely death of their esteemed associate, Alpheus Henry Snow, Esquire.

He had served upon the Executive Council for the ten years last past and had proved an assiduous and valued member, faithful in attendance, wise in counsel, zealous and devoted in spirit.

He had been an intelligent and scholarly contributor to the publications of the Society and to those of other organizations having kindred though not identical purposes. He was animated by an especial interest in the government of dependent and semi-civilized nations and became known as a diligent and discriminating student of the, often neglected, problems concerning them, which must be dealt with in most colonial systems.

His two volumes published on these subjects in 1902 and 1918 are worthy of mention. The former is entitled *The Administration of Dependencies* and the latter (prepared at the request of the Department of State of the United States for the use of the Peace Congress at Paris) is entitled *The Question of Aborigines in the Law and Practice of Nations.* These works display Mr. Snow's patient industry and laborious research, his sense of jus-

tice and, what is quite as important, his humane feeling. The latter involved the development of a theme but little dealt with before in systematic fashion, and Mr. Snow's voyage in these unchartered seas entitled his labors to greater honor and especial recognition.

The two volumes remain his enduring monuments and command the grateful acknowledgment of those who desire a just and adequate solution of these vast international problems, affecting so large and so defenceless a portion of mankind.

Mr. Snow united, in all that he submitted, a spirit of laborious caution with a sincere desire to promote a progressive humanity.

The members of the Executive Council record their deep sense of loss, their appreciation of his modest, conscientious and effective labors, especially in behalf of those who could make no return, and their high sense of the lasting value of his contributions to justice and humanity in the unequal relations of nations and of the races of men.

They further record their kindly and affectionate memory of his faithful collaboration in the long labors of the Society and their profound sympathy for those to whom his loss is even more personal than to themselves.

They direct that these resolutions be spread upon the records of the Society and that a copy be respectfully transmitted to Mrs. Snow.

The EDITOR-IN-CHIEF of the JOURNAL (Mr. Scott) referred to the difficulty of getting contributions for publication, especially editorial comments, and he cited the last number of the JOURNAL (October, 1920) to which he contributed all the comments. He did not object to writing the comments, but he thought it humiliating to be compelled to sign each one with his name, thus publicly disclosing a lack of coöperation by other members of the Board of Editors. He suggested that the rule requiring the signature of editorial comments be modified to meet such cases in the future. After considerable discussion, the following resolution was adopted:

Resolved, That editorial comments in the JOURNAL may be published unsigned, provided they are submitted to and approved by two members of the Board of Editors in addition to the writer.

ELECTION OF OFFICERS AND COMMITTEES

The following officers and committees were unanimously elected, the Recording Secretary, upon motion, casting a single ballot for them:

Chairman of the Executive Council: Hon. OSCAR S. STRAUS.

Executive Committee:

Hon. ELIHU ROOT,
Hon. GEORGE GRAY,
Mr. CHARLES NOBLE GREGORY,
Hon. DAVID JAYNE HILL,
Hon. ROBERT LANSING,
Mr. JACKSON H. RALSTON,
Prof. GEORGE G. WILSON.

Treasurer: Hon. CHANDLER P. ANDERSON.
Recording Secretary: Mr. JAMES BROWN SCOTT.
Corresponding Secretary: Mr. CHARLES HENRY BUTLER.
Assistant to the Secretaries: Mr. GEORGE A. FINCH.

Standing Committee on the Selection of Honorary Members:
Prof. GEORGE G. WILSON, *Chairman,*
Mr. JACKSON H. RALSTON, Mr. THEODORE S. WOOLSEY.

Standing Committee on Increase of Membership:

Hon. OSCAR S. STRAUS, *Chairman,*
Mr. CHARLES CHENEY HYDE, Prof. JESSE S. REEVES,
Prof. JOHN H. LATANÉ, Mr. THEODORE S. WOOLSEY.

Auditing Committee:

Mr. CHARLES CHENEY HYDE, Mr. CHARLES RAY DEAN.

Committee on Codification:

Hon. ELIHU ROOT, *Chairman ex officio,*
Hon. CHANDLER P. ANDERSON, Hon. ROBERT LANSING,
Mr. CHARLES HENRY BUTLER, Hon. PAUL S. REINSCH,
Mr. LAWRENCE B. EVANS, Hon. LEO S. ROWE,
Mr. CHARLES NOBLE GREGORY, Mr. JAMES BROWN SCOTT,
Professor GEORGE G. WILSON.

Committee on Annual Meeting:

Mr. JAMES BROWN SCOTT, *Chairman,*
Prof. PHILIP M. BROWN, Mr. CHARLES CHENEY HYDE,
Mr. WILLIAM C. DENNIS, Hon. ROBERT LANSING,
Mr. CHARLES NOBLE GREGORY, Hon. BRECKINRIDGE LONG,
Mr. JACKSON H. RALSTON.

The Board of Editors of the *American Journal of International Law* was then reëlected as follows:

Mr. JAMES BROWN SCOTT, *Editor-in-Chief,*

Hon. CHANDLER P. ANDERSON,	Mr. CHARLES CHENEY HYDE,
Prof. PHILIP MARSHALL BROWN,	Hon. ROBERT LANSING,
Mr. CHARLES NOBLE GREGORY,	Hon. JOHN BASSETT MOORE,
Prof. AMOS S. HERSHEY,	Prof. JESSE S. REEVES,
Dr. DAVID JAYNE HILL,	Prof. GEORGE G. WILSON,

Mr. THEODORE S. WOOLSEY.

Mr. GEORGE A. FINCH, *Secretary of the Board of Editors and Business Manager.*

MISCELLANEOUS BUSINESS

Secretary SCOTT called attention to the resolution of the Executive Committee of January 24, 1920, "that the Executive Council be requested to reconsider the regulation of January 29, 1906, which it has established under Article III of the Constitution in regard to membership." He explained that the regulation of 1906 provides that "any man of good moral character interested in the objects of the Society may be admitted to membership in the Society," and that the request for reconsideration of it was made by the Executive Committee in view of the desire expressed by some members that women be admitted to membership or at least that the regulation be amended so as not to exclude women. Upon motion of Mr. LANSING, seconded by Mr. ROOT, the following resolution was unanimously adopted:

> *Resolved,* That the regulation of January 29, 1906, concerning the admission of members be, and it hereby is, amended by changing the word "man" to "person."

Secretary SCOTT then laid before the Council a suggestion emanating from German and Austrian members of the Society that they be excused from the payment of dues pending the adjustment of international exchange. Several members objected that the same request might be made by members in other European countries adversely affected by the rate of exchange, and doubt was expressed whether the Council had the right under the publishing contract to waive the payment of dues, four-fifths of which go to the publishers. No action was taken upon the suggestion.

Mr. LANSING called attention to the wording of the second paragraph of Article III of the Constitution of the Society, which reads, in part: "Each member shall pay annual dues of five dollars and shall thereafter become entitled to all the privileges of the Society, including a copy of the publications issued during the year." He queried whether, under a strict interpretation of this article, the Executive Committee had authority to make a separate charge for the annual proceedings and the cumulative index of the JOURNAL, as had been done by the resolution of the Committee of January 24, 1920.

Secretary SCOTT stated that the resolution of the Executive Committee had already been acted upon by the officers of the Society and payment for the proceedings had been made by many members; that it would cost about $3,000 to publish the cumulative index, which sum could be provided only by making a separate charge for it.

After discussion, it was decided that the circumstances required that the action of the Executive Committee should stand until the next meeting of the Society, when the Executive Council would recommend its ratification, the officers in the meantime going forward with the publication of the proceedings and the cumulative index and charging separately therefor. Upon motion of Mr. ROOT the following resolution was then adopted:

> *Resolved,* That the Executive Council recommends to the Society the amendment of the Constitution by striking out the word "publications" in the third line of Article III, paragraph 2, and inserting in lieu thereof the words "American Journal of International Law."

Secretary SCOTT reported that the Carnegie Endowment for International Peace had subscribed for 500 copies of the cumulative index for distribution to the libraries on its depository list.

Several members of the Council made inquiries regarding the possibility of making an arrangement whereby the Society might exchange bound for unbound sets of the JOURNAL. Mr. FINCH stated that he had made further inquiries on this subject since his last report to the Executive Committee on January 24, 1920, and that while it was entirely feasible for the Society to look after the binding, it seemed impossible to adopt a general plan of exchanging bound for unbound volumes because of the high and uncertain cost of binding. Under the circumstances he suggested that the Society offer to look after the binding at cost. The following resolution was adopted:

Resolved, That the members of the Society be notified that the Society will exchange bound for unbound copies of the Society's publications at the actual cost of binding, plus postage or express charges, and that information as to the cost will be given upon application.

RESUMPTION OF ANNUAL MEETINGS OF THE SOCIETY

Secretary SCOTT. Mr. Chairman, and gentlemen, the moderate program of routine business is now finished. The really important question to take up is the resumption of the annual meetings of the Society next year and the program for the first meeting. Having suspended two meetings during the war in order that the discussion might be scientific and not under excitement, it seems that the time has arrived to begin again, but we should take some steps to be sure that we have an interesting, effective and valuable program. Mr. Root has given some thought to this, and proposed the other day a general theme for discussion, saying that, if it were agreeable to the members, he would like to discourse somewhat upon the meeting of the Advisory Committee of Jurists at The Hague last summer which resulted in a recommendation for a Permanent Court of International Justice, and to lay particular stress upon the resolution adopted by that committee calling for periodic meetings of conferences for the advancement of international law. The resolution in question reads as follows:

The Advisory Committee of Jurists, assembled at The Hague to draft a plan for a Permanent Court of International Justice,

Convinced that the security of States and the well-being of peoples urgently require the extension of the empire of law and the development of all international agencies for the administration of justice,

Recommends:

I. That a new conference of the nations in continuation of the first two conferences at The Hague be held as soon as practicable for the following purposes:

1. To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.
2. To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.
3. To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.
4. To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

II. That the Institute of International Law, the American Institute of International Law, the Union Juridique Internationale, the International Law Asso-

ciation, and the Iberian Institute of Comparative Law be invited to prepare with such conference or collaboration *inter sese* as they may deem useful, projects for the work of the Conference to be submitted beforehand to the several Governments and laid before the Conference for its consideration and such action as it may find suitable.

III. That the Conference be named Conference for the Advancement of International Law.

IV. That this Conference be followed by further successive conferences at stated intervals to continue the work left unfinished.

Chairman STRAUS. We shall be glad to hear from Mr. Root.

Mr. ROOT. You may remember that early in 1919, at the time when the Conference at Paris was considering the peace treaty and had sent out the first form of the League of Nations agreement,—at that time designated as a Constitution for a League of Nations,—asking for suggestions of amendment or change or addition, the Executive Council of this Society adopted a resolution reading as follows:

> *Resolved,* That the Executive Council of the American Society of International Law urges upon the Conference at Paris the adoption of a provision by which there shall be called a general conference of the Powers to meet not less than two years nor more than five years after the signing of this convention for the purpose of reviewing the condition of international law, and of agreeing upon and stating in authoritative form the principles and rules thereof; and that thereafter, regular conferences for that purpose shall be called and held at stated times.

Mr. LANSING. What was the date of that?

Mr. ROOT. That was April 17, 1919. The resolution was communicated to the Department of State and cabled by the Department to Paris, and, I suppose, brought to the attention of the members of the Peace Conference. That was an authoritative and definite expression of view by the Executive Council of the Society in response to the request of the Paris Conference for suggestions, and the suggestion was made and reached Paris. No action was there taken conforming to it.

There was also a similar resolution adopted by the Committee on International Law of the New York City Bar Association,—a very strong committee made up of members of both political parties,—and after very full discussion, they adopted a similar resolution, which was also cabled over to Paris. I think there can be no doubt that the suggestion was in conformity to the established opinion of thoughtful

people, people interested in public affairs and foreign affairs of the United States for generations.

That suggestion having been ignored or having fallen by the wayside and not acted upon, there came up last summer an opportunity to do something about the subject. I do not know how far the Executive Council knows about the work of the committee which met last summer at The Hague. The Covenant of the League of Nations provides in Article 14 that—

> The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Some time in the winter, I think in February, of 1920, the Council of the League of Nations issued an invitation to gentlemen who were described as "international jurists" in various countries, requesting them to be members of a committee to meet at an early day for the purpose of formulating and submitting to the Council plans for the establishment of a Permanent Court of International Justice; that is to say, to formulate and submit to the Council plans which the Covenant requires the Council to formulate and submit to the members of the League. It was purely a committee of experts called individually and no one having any relation to his own government. Its membership was scattered over a large part of the surface of the earth, representing a very great variety in habits of thought and customs, traditions and ideas of jurisprudence,—from Great Britain, Spain, France, Belgium, Holland, Norway, Italy, Japan, Brazil and the United States.

Mr. BARRETT. Argentina was invited, but could not accept.

Mr. ROOT. Yes. Serbia was likewise invited but its Prime Minister could not attend. Out of the original twelve invited, ten accepted, and some of them had to be changed because certain individuals could not attend.

After the committee was created and before it got together in Europe, the Dutch Government sent to the Secretariat of the League of Nations an invitation for the committee to come there. The original idea was, naturally enough, to meet in London where the temporary Secretariat of the League was located. The Secretariat conferred by wire with members of the committee who had accepted, and the invitation of the

Dutch Government was accepted, so that we all went to The Hague. We met in the Peace Palace. That was, I think, the first real use to which the Palace had been put.

For about six weeks we worked over a plan and finally devised one. There are some interesting things about it, some things specially interesting to America. There was a plan for such a court framed at the Second Hague Conference in 1907. It was framed at the instance of the American delegates under instructions from the American Government. The foremost advocate of it in the conference was Mr. Choate. The draftsman of it was Dr. Scott. Great Britain and Germany both seconded very warmly the efforts of the American delegation.

The plan recommended in 1907 lacked unanimity in one particular of very great importance. It proved impossible to agree upon the way of appointing the judges. It was manifest that it was impossible to have a court which would contain a representative from every country on the face of the earth. A court of fifty would not be a judicial court. All of the small nations clung with great tenacity to their rights of equal sovereignty and would not permit any great nation to have a greater voice in the constitution of the court than they had. On the other hand, the great nations, which would furnish most of the business of the court, were unwilling to be overwhelmed by the numerical superiority of the smaller nations.

We encountered at the outset that same difficulty in the Advisory Committee of Jurists. The gentlemen who came from the small countries were quite positive in their ideas that they never could yield their right of equal suffrage. There were a number of plans submitted which had been prepared in the smaller countries, all providing that the members of the court should be elected by the Assembly of the League of Nations, which meant that the small countries would create the court. The Committee finally solved the problem by taking over bodily the example furnished by the American Constitutional Convention of 1787. We pointed out to them that here in the formation of the American Union was the same question, that big states were unwilling to be overwhelmed by the numerical superiority of small states, and small states were jealous of their equality, and that the difficulty was solved by the creation of two legislative bodies, in one of which the small states should be predominant and in the other of which the

large states should be predominant, so that each had a veto on any unfairness by the other.

Following that, we provided that the judges should be elected by the separate concurrent votes of the Assembly and the Council, the smaller states being predominant in the Assembly and the larger states predominant in the Council. The plan avails itself of the existing machinery of the League of Nations. Similar machinery, however, can be created at any time with great facility.

Then we met a further difficulty. It was objected that the Assembly and the Council never would agree. They then had described to them the working of that great American institution, the conference committee, in which countless laws on which the two Houses of Congress have been opposed most violently, have been threshed out with good results. The Committee adopted that idea and provided that, if the Assembly and Council do not agree in the election of judges by a certain time and after a number of ballots, a conference committee shall be appointed who shall agree and report.

We provided also as a separate proposition that the election by the Assembly and Council should be from lists made up by the members of the old Permanent Court of Arbitration at The Hague, providing that at a given time before the election, three months I think, the members of each country in the old Permanent Court of Arbitration at The Hague shall send to the secretary-general of the new court two names, and when all the names are received in that way, a list shall be made up, and from that list these two bodies shall elect the members of the court; so that you get the origin of the list from sources withdrawn from the ordinary give and take of politics. That is to say, Judge Gray and Mr. Straus and Mr. John Bassett Moore and myself, representing the United States in the old Permanent Court of Arbitration, would have to get together and agree upon two names. We naturally would agree upon the names of men competent to be judges, find out whether they would be willing to be judges, and then send those names on.

We provided further that the conference committee should have free scope to go anywhere it pleased to find a man to break a deadlock between the members on this list.

This method of appointing the judges settled the difficulty which prevented the court plan from becoming effective in 1907.

We had other difficulties. We had a great deal of discussion on the question of jurisdiction and on the question of membership in the court.

As to the question of jurisdiction, we recommended, first, general jurisdiction upon all questions submitted, and next, an obligatory jurisdiction upon strict questions of law, the interpretation of a treaty, questions of international law, and certain questions arising upon the application of a decision upon the law. As to those questions, the acceptance of the court would constitute an agreement to obligatory arbitration between the accepting nations. We never felt very confident that the world had come to the point where it was ready to accept obligatory arbitration. There were some indications, even while we were at work, to throw great doubt upon that. But we felt in the committee that we ought to recommend what we thought ought to be adopted, and we did so.

One subject that caused us really a great deal of trouble was the question as to whether there should be national members of the court; that is to say, here was a court of eleven judges and four substitute judges, contemplating the future enlargement of the court to fifteen when other countries come in. Everyone of those eleven judges will be a member of some country. His country is likely to have litigation before the court. In that event, must he leave the bench? It was quite apparent that there would be many countries that would not agree to that. Of course, the first reaction of a national lawyer, a municipal lawyer, would be, "Yes, he must get out." But we came to this conclusion, that so great are the differences between the peoples of the different nations who are expected to come before the court, in their preconceived ideas, their systems of law and of practice and procedure, so great are the differences which do not appear among the issues of any litigation, that one of the great obstacles to doing justice would be an inability to understand, an inability of the judge from one country to understand the people of another country and the origin of the litigation and the meaning and effect of what had been done. I think half the time of the meeting of the Committee was taken up by discussions which were caused solely by the fact that common law lawyers there could not understand what the continental lawyers were talking about, and that they could not understand what we were talking about. We all had different sets of ideas in our heads. So we concluded, in order that the court should understand the cases brought before it, that there ought to be one judge from each of the countries concerned. With a

court of eleven judges, the presence of those judges would have the effect of informing the court, not of affecting the determination of the litigation; and accordingly we provided that, if a country comes in with a case and has not a judge on the bench, and the country on the other side has a judge, the country that has not one shall name one to go on the bench, preferably from the judges of the old Court of Arbitration.

After a great deal of discussion, we came to an agreement and the report was unanimous.

Then we also adopted three resolutions. One expressed the hope that the Academy of International Law which was founded in 1913, but suspended by the war, would be promptly reëstablished at The Hague. Another recommended the consideration of the establishment of a High Court of Justice for the purpose of trying crimes against international public order; that is to say, we did not express any opinion, but we recommended the consideration of creating a situation under which there could not again occur the sort of thing which we had with regard to the proposed trial of the Kaiser, a purely *ex post facto* proceeding to try for a crime against morality which was not an offense created by law and over which there was no jurisdiction at the time of its commission. We recommended that that subject be considered. Of course the creation of a court to do that would involve a statement of the law.

Then we adopted the resolution to which attention has been called, recommending "That a new conference of the nations in continuation of the first two conferences at The Hague be held as soon as practicable for the following purposes,"—it is these purposes which I suggested to Dr. Scott might well be the subject for the consideration of the American Society of International Law at its next meeting,—

"1. To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war."

God knows what the law is! None of us know. It is time the world is beginning to get its second wind, time that somebody begins some proceedings toward finding out and declaring what there is left of international law; what is broken beyond repair and what remains; what is to be treated as a rule which has been violated, but which stands, just as the law against murder and theft stands even though people commit murder and theft; and what rules, if any, have been so smashed that they do not exist any longer.

"2. To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war."

What changes ought there to be made now?

"3. To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore."

Many of these are old questions that people could not agree upon. Perhaps they can now. One way that you can get agreement upon such things is by keeping at it, and what you could not do yesterday you may do today, and what you can not do today you may do tomorrow; but continued effort gradually tends toward agreement.

"4. To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted."

Of course all of us were conscious that there were great fields not covered by the rules of international law. I do not know of anything more important than to consider what those fields are and what areas in them can now be covered by pushing out rules. There is the whole subject of aërial navigation that remains to be regulated and ought to be regulated.

At the close of this enumeration there is a provision in the recommendation "That the Institute of International Law, the American Institute of International Law, the Union Juridique Internationale, the International Law Association, and the Iberian Institute of Comparative Law be invited to prepare with such conference or collaboration *inter sese* as they may deem useful, projects for the work of the Conference to be submitted beforehand to the several Governments and laid before the Conference for its consideration and such action as it may find suitable.

"That the Conference be named Conference for the Advancement of International Law.

"That this Conference be followed by further successive conferences at stated intervals to continue the work left unfinished."

This Society is a member of the American Institute of International Law and is the chief and leading member.

Chairman STRAUS. You mean this Society is a member of the American Institute, or representatives of the Society are members?

Mr. ROOT. This Society is specifically affiliated with it. The Insti-

tute has a special relation to societies, and for the purpose of making the Institute possible great efforts were made to secure the formation of societies, so that societies were formed in every American country and they furnish the basis of the Institute.

This program is in pursuance of the policy declared by the Executive Council of the American Society of International Law in the resolution to which reference was made at the beginning of these remarks. It is in pursuance of the declared policy of the Society. It has been put into definite form and has acquired a certain degree of authority by the unanimous recommendation of this committee under the auspices of the Council of the League of Nations. Whether the Council has done anything about it, I do not know. Perhaps you know, Dr. Scott?

Secretary SCOTT. I understand the Council of the League adopted each one of these resolutions.

Mr. ROOT. If they were adopted by the Council they certainly ought to be adopted by the Assembly, because the Council is dominated by nations that do not want to be interfered with, and the Assembly by nations who want protection and protection by law.

Some work has to be done—a lot of work has to be done. I do not know any one upon whom it more naturally falls than it does upon the American Society of International Law, because this is along the line of the historical past and present policy of our country, because it is the declared policy of the Society, because we are the leading members of the American Institute which is specifically called upon for assistance in these resolutions. It seems to me they would serve to give a certain degree of form and consistency to the discussions of our annual meeting, and that different topics arising among the multitude of questions involved in the resolutions might well be allotted to different speakers; and it might be very interesting to get the reactions from the different members of the Society present. I think that is the proper basis for the discussions of our meeting.

Chairman STRAUS. We have not yet settled the date of our annual meeting.

Secretary SCOTT. We have always met in the last week of April, beginning with the last Thursday of April, and that in the year 1921 will be the 28th.

Mr. ANDERSON. Has it been settled officially that there is to be no meeting this year?

Chairman STRAUS. If we settle that the next meeting is going to be in April, that will settle the question for this year, will it not?

Mr. ANDERSON. We were speaking of the annual meeting for next year, but for this year the question was postponed to be settled at this meeting.

Mr. ROOT. I move that the next general meeting of the Society be held on the 28th, 29th and 30th days of April, 1921.

Mr. COUDERT. I second that motion.

The motion was unanimously agreed to.[1]

Chairman STRAUS. Now we have before us the question of the subject of the meeting which has been so clearly elucidated by Mr. Root. What about the subject? Shall we take as the subject of this annual meeting, the recommendations of the resolutions of the Advisory Committee of Jurists?

Mr. RALSTON: I move that Mr. Root's suggestion be adopted.

Mr. HYDE. I second the motion.

Mr. LANSING. Mr. Chairman, I do not think there is any subject that could be more appropriately considered or more appropriately brought up than the one Mr. Root has suggested. Of course, it may excite some debate as to whether we should accept anything which originates with the League of Nations, but that is quite an erroneous attitude, no matter how a man stands on the general subject. This is a matter that practically proposes a separate and distinct conference that has nothing to do with the League of Nations whatever, and not subject to any action by the League. It is entirely distinct, it is entirely in line with the ancient order of the Hague Peace Conferences, and I am heartily in favor of it and think it is a very timely subject.

Mr. ROOT. My idea is not that this be a program, but that this be the basis on which a program be made and that questions be formulated illustrative under these different headings.

Mr. SCOTT. We have a committee for that purpose. We should instruct the Committee on Program to adopt this resolution as the basis and that it formulate under this general reference certain phases for discussion.

Mr. ROOT. I think it might be very useful under that first item,—"To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent

[1] See Amendment of this motion, *infra*, p. 26.

war,"—to have a statement or suggestion of what are the rules that are thrown into doubt. We have a vague idea that there is doubt, but it has not been defined at all. What rules are they? Get something formulated, some expression as to what the doubts are and how the doubts have been created.

Mr. LANSNG. I suppose your idea, Mr. Root, is not only what rules have been thrown out, but where these changed conditions of warfare have made impractical the rules of war. For instance, we have the submarine, we have the airplane and we have the radio. There are three absolutely new inventions that affect the entire conduct of war and each one of which is a subject by itself.

Mr. ROOT. My idea is not that the Society should undertake to solve all these questions at this meeting, but that they should get them stated, have the field considered, to take the first step by bringing out and getting statements to be put in print, of what old rules are shaken or are made obsolete and what fields have to be remade.

Suppose you put the question, what rules of international law have become obsolete or impracticable, if any, by reason of the introduction of the submarine? You can put a separate question, what by reason of the introduction of radio-telegraphy, and another, what by reason of the introduction of the airplane? There are separate specific questions coming in under those general heads, and through the discussion of which you will gradually build up a platform from which the efforts to restate and reëstablish international law can proceed.

Admiral STOCKTON. It seems to me a very happy thought in this resolution that its recommendation is rather in the nature of a continuance of the consideration of the first two conferences at The Hague. We are not mentioned among the societies specified in it, so that we are not tied down to these particular suggestions. While we have a very wide scope in these recommendations, we are not limited by them and can take up anything. I think, under the circumstances that we can take the whole field of international law, though for practical purposes it would be wise to subdivide it and to have portions treated by certain people or certain committees. But we have before us a vast number of unsettled questions, some of which have never come up before and some that never existed before. The question of bunkering coal for steamers is a big question. The law of blockade has almost gone to pieces on account of the submarine, which becomes in itself a serious question for consideration.

These important subjects are now in the formative stage, and it is time, I think, for the Society to resume its meetings and give an opportunity to the members to state their views.

Chairman STRAUS. The motion is before us for action.

Mr. ANDERSON. Mr. Chairman, before the motion is put, inasmuch as we are leaving the matter very largely to a Committee on the Annual Meeting, would it not be wise, in view of the possibility that there will be a very elaborate program, to authorize that committee to add another day to the time for the meeting if they think that desirable after they have arranged the program. In other words, instead of beginning on Thursday, authorize them in their discretion to begin on Wednesday.

Mr. ROOT. There may be interest enough at that time to keep people four days. Why not fix the date the 27th instead of the 28th? April 27th and following days.

Mr. SCOTT. It would be much better if we did that.

Chairman STRAUS. The motion is that the next annual meeting be held on the 27th of April and following days.

The motion was unanimously agreed to.

Mr. RALSTON. There has been no action on my motion that we accept generally Mr. Root's suggestion as to the bases for the subject-matter to be considered at the meeting.

Chairman STRAUS. The motion is that the subjects enumerated in the resolution of the Advisory Committee of Jurists, laid before the Executive Council by Mr. Root, be adopted as the basis of the program of the next annual meeting of the Society, and that the Committee on the Annual Meeting formulate illustrative questions for discussion under the different headings.

The motion was unanimously agreed to.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

Secretary SCOTT. There is another matter which could be acted upon at this time,—whether there be authority in the Secretary to issue the proceedings of this day as the proceedings for the year 1920, as was done with the previous proceedings of the Executive Council. I have a feeling that the remarks that have been made today regarding the court and regarding the program are of such importance that they should be published as the proceedings for 1920.

Mr. ROOT. The only question is whether there is enough to be interesting. I think that if you print with the proceedings the court project and the resolutions as laid before the Council of the League of Nations as the basis of their action, they may be very interesting and useful.

Let me ask if something further might not be of interest. Dr. Scott has, I judge, the information received by cable as to the form in which the Council has referred this court plan to the Assembly?

Secretary SCOTT. Yes. (The Secretary handed Mr. Root the cablegram from the Secretary General of the League of Nations. It is printed, infra, p. 35.)

Chairman STRAUS. Does that modify the recommendations in any way?

Mr. ROOT. It modifies by striking out the provision for obligatory jurisdiction; that is, the Council does not go quite so far as our recommendation. I think it is important, but I do not think it is vital at all.

Chairman STRAUS. Does that make it pretty much like the utilization of The Hague Tribunal?

Mr. ROOT. It leaves it like the plan for a Court of Arbitral Justice adopted by the Second Hague Conference, but with a settlement of the controversy over the appointment of the judges that was unsolved there, and with a few important additions.

The theory of the jurisdictional provision under the plan recommended by the Advisory Committee that sat at The Hague last summer was that adherence to the convention creating the court would be a consent to obligatory arbitration, just like a general arbitration treaty. It would be just the same as if all these countries had made with each other treaties of arbitration. It appears that some countries do not want to do that, so the Council has taken out that obligatory provision. The effect will be that the countries that do want obligatory arbitration will go on making treaties of arbitration with each other, just as they did after the Second Hague Conference. The United States made 25 or 30 treaties of obligatory arbitration. The United States and England, the United States and France, the United States and other countries concluded treaties making arbitration obligatory for justiciable questions, and that process was not confined to us. There were some 200 treaties of that kind criss-crossing the world making arbitration obligatory. By applying that process to this court we get substantially the same result that we will get by putting a

single obligatory arbitration provision in the plan of the court, so that I do not feel filled with rage about it.

Judge GRAY. I wish you would give an illustration of how these arbitration treaties would affect the working of the plan to introduce compulsory arbitration before the court.

Mr. ROOT. Here is a court established. Great Britain and the United States make a treaty which now, after the court is established, will refer to the new court, whereas before it referred to the old court at The Hague, so far as strictly justiciable questions go. That makes arbitration obligatory as between those countries. England and France make a similar treaty, France and the United States make a similar treaty, and they make arbitration obligatory as to these three countries. Thirty or forty other countries go on and make treaties, and you thereby get consent to the jurisdiction of the court upon justiciable questions practically universal, just as though it were put into these plans.

Judge GRAY. But how do you get the authority, or how is the authority transferred to the court that you establish?

Mr. ROOT. England and the United States, if they agree to the court at all, agree to that transfer. Of course, we keep the old Court of Arbitration at The Hague, because there are many questions suitable for arbitration that are not suitable for submission to a Court of International Justice. There are many questions that call for the half-judicial, half-diplomatic, half-mediatory function of the Court of Arbitration.

Chairman STRAUS. Political questions would come under that as a general proposition?

Mr. ROOT. Yes.

Mr. ANDERSON. May I ask a question about the adoption of the plan? Does adoption by the Council and the Assembly put the court in operation, or do they have to refer the plan to the members of the League to make a new treaty of agreement about it?

Mr. ROOT. I think they have to refer it to the members. That is the present language of the Covenant.

Mr. ANDERSON. They must act independently of the Council and Assembly and make practically a new treaty to put the court in operation?

Mr. ROOT. I think so.

Chairman STRAUS. So you think striking out the obligatory clause of resort to this court will not at all discourage the making of separate treaties, such as you have referred to, which do make the jurisdiction of this court obligatory in questions of a juridical nature?

Mr. ROOT. I think it will bring into play the making of these treaties just as they were made after the Second Hague Conference.

Chairman STRAUS. Instead of discouraging it, you think it will encourage that kind of treaty?

Mr. ROOT. Yes.

Mr. COUDERT. I understand that all questions admittedly justiciable under the treaty are to be referred to the new tribunal rather than to the old mechanism?

Mr. ROOT. Yes.

Mr. WOOLSEY. Would it not be advantageous at the next meeting to have a discussion of this question or a paper or two by some one—by Mr. Root himself? It is very interesting to us, who may or may not go into the League, to know how this court will be operated and what effect it will have upon us.

Chairman STRAUS. In order to adopt this plan of the court which this committee of experts has presented, do you understand it will be necessary to have a unanimous vote of the Council and a majority vote of the Assembly?

Mr. ROOT. I will not undertake to say. My own idea is that it has to be submitted to the members. These are the terms of Article 14 of the Covenant.

Mr. ANDERSON. This is what Article 14 says:

> The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Judge GRAY. In formulating the plan, Mr. Straus wants to know whether the Council has to act by unanimous vote?

Chairman STRAUS. I refer more to the adoption of the plan. After it is referred by the Council to the members, will there have to be a unanimous vote of the members in order to adopt the plan?

Mr. COUDERT. Would it not be binding between the members who voted for it regardless of the fact that some may not?

Mr. ROOT. There is no such thing as a vote strictly in international affairs. There may be an expression of agreement or of dissent. The League of Nations in some things for the first time introduces the idea that nations can be controlled by vote without their consent, because there are certain things which are considered to be unimportant in which the Assembly may act by a vote of all the members of the Council and a majority of the other members.

As to this court, I think that you are free from any consideration of that subject by the terms of Article 14 of the Covenant, which are that the Council is to formulate and submit to the members the plan, and I know of no authority conferred upon the Assembly to give its consent for a member without the member's express authority.

The question as to the effect of some members agreeing and others not agreeing is a question that remains to be determined. The 14th Article does not solve it. I do not recall anything in the League Covenant that solves it. I suppose the general principles of international law must then apply. A country cannot have its sovereignty limited by the judgments of a court unless it has agreed to submit to the jurisdiction of the court. I see no reason why, however, this plan having been adopted by the Council, which is the body authorized to formulate and submit it to the members, it should not go into effect as to those countries which choose to enter into a convention to give it effect, quite irrespective of other countries. It might require some modification.

Chairman STRAUS. But they could enter into a convention to give a plan like that effect regardless of the recommendation of the Council, could they not?

Mr. ROOT. They could.

Chairman STRAUS. So you think it would be necessary that a convention be made by such states as desire to adopt the plan?

Mr. ROOT. Yes, you might call it a convention.

Judge GRAY. An additional convention to the other conventions of the treaty?

Mr. ROOT. Yes.

Chairman STRAUS. What you have stated seems to clarify something that I myself must say I did not have in mind, namely, that if this plan of yours is adopted by the League it will not be in effect as between the nations that are members of the League until the nations

members of the League have adopted it by special convention? Is that the idea?

Mr. ROOT. Yes. I do not see any authority in the League Covenant to the persons who will gather together as the Assembly of the League to vote on such a question to control any dissenting nation by their vote. It may be that the nations represented in the League will give authority to their representatives in the Assembly to assent for them. It does not make much difference how it is done, but it does seem to me that no state can be bound by the provisions of this plan for the court except by its own consent.

Mr. ANDERSON. The treaty-making power of the state must participate in the agreement?

Mr. ROOT. Yes.

Chairman STRAUS. But does that principle, which you have very clearly stated, go all through the provisions of the Covenant of the League?

Mr. ROOT. It goes through most of them.

Chairman STRAUS. Except those that are of an administrative character?

Mr. ROOT. I say "most of them," and you say "that principle." Perhaps I do not clearly understand what you mean by "that principle"—that is, the principle that the will of a state is not to be controlled except by its own consent?

Chairman STRAUS. Yes, that is what I mean.

Mr. GREGORY. How as to the will of a state to make war? Is not that to be controlled under the League of Nations, or resisted at least?

Mr. ROOT. Yes, clearly so. I was merely trying to make definite what Mr. Straus's question was. As to his question, I think that under the League Covenant there are some things contemplated which can not be done except by the new and express exercise of the treaty-making power of a state. It seems to me this is one of them. There are other things which can not be done without the consent of the state expressed through its representatives in the Council or in the Assembly, the exercise of the treaty-making power of the state being in conferring upon that representative authority to give or withhold consent. Then there are other things which, upon the happening of such stated conditions, the state is bound to without any further exercise, direct or indirect, of its treaty-making power.

I think there are those three categories. In that last category would be the exercise of the punitive powers consequent upon violation of the provisions relating to delay in making war and making war in violation of the unanimous opinion of the Council or the Assembly. Those conditions arising, there would be action called for as to which the treaty-making power of the states has already been exercised and the action is called for without any further exercise of it.

Mr. ANDERSON. Is there not one further category, and that is what might be called the purely administrative action; that is, matters that have been arranged beforehand which the executive authority of the states can deal with without the treaty-making power?

Mr. ROOT. Yes, but I think that is rather a minor or subordinate thing; that is like the Universal Postal Union and a lot of things of that kind. It is the general business of the nations.

Mr. ANDERSON. It is the sort of business they have occupied themselves with up to this time.

Mr. ROOT. In the main. They have not had any chance up to this time. The property has not been delivered to them to which their duties relate. The League of Nations or the Council is like a man who has hired a farm and agreed to pay rent in kind, and is called upon to pay the rent before he has been put in possession of the farm. It was an organization to preserve peace in a peaceful world, and they were entitled to have a peaceful world delivered to them, which they have not. It is all the result of trying to organize a future peaceful world in advance of winding up the war and imposing the will of the conquerors upon the conquered, which naturally and necessarily was the first thing to be done; and it ought to have been done while the armies of the conquerors were in being, and it could have been done like that at that time. But in order to organize the future of the world, that was neglected and the armies have been dissipated and now we are traveling along with difficulties that might have been solved readily before.

The organization for the preservation of peace has very little property to act on. It has been doing a good thing about the Aaland Islands. On the administrative side they have been doing a good thing about dealing with typhus in Poland. They have been doing very fine work with regard to the repatriation of prisoners whom it was quite difficult to release,—the hundreds of thousands of prisoners that are

scattered all over Russia, who can not get home and nobody under any obligation to send them home. It has been dealing with that very effectually.

Mr. WOOLSEY. Does not the Aaland Islands case show perhaps how a domestic question can be made an international question? It might have some application to our domestic questions.

Mr. ROOT. The Aaland Islands case shows how easily it is for what is ordinarily supposed to be a domestic case to be treated as an international question. The conclusion of the committee of jurists called in by the Council to help them, because this court was not yet organized, was in substance that the reorganization of northern Europe, Russia, the Baltic Provinces, and Finland, was so radical that the old relations between the Aaland Islands and Finland and the still later relations to Sweden no longer existed, but the Aaland Islands were in the pot and subject to reorganization. I am inclined to think they are right about that, but it does illustrate the ease with which a question that starts as a strictly domestic question can become international. I think their conclusion was right about it. I have read their reasons concerning it.

Mr. COUDERT. As regards this court, is the situation simply this, that the Council, acting under Article 14 of the Covenant, submits a plan and that plan is to become and can only become effective when the members of the League who ratify it enter into some convention for that very purpose, and that until that is done the matter remains clearly a proposition emanating from the Council? Is that the position, Mr. Root?

Mr. ROOT. Of course that is something for these gentlemen who are running the League of Nations to determine. All I can say is that that is the way it appears to me. The language of Article 14 is perfectly clear that they are to form this plan for submission to members of the League, but I do not find in the League Covenant any authority from the members of the League to the Assembly to vote on such a question and bind them by such a vote.

Mr. COUDERT. The general opinion is, and I think most of the gentlemen around this table thought, that when the two League bodies had passed upon this court, it was created.

Mr. ROOT. It may be that that may be implied,—that is, the countries who are represented in the Assembly may confer authority upon their members.

Mr. ANDERSON. The Assembly has authority to deal with any question that comes within the scope of the Covenant.

Mr. ROOT. That is as far as I go, that I do not find in the Covenant any authority given to the members of the Assembly to bind their countries upon this proposition. They may get it. They may vote and their countries may approve and consent to be bound by it, but as I say, that is something for them.

Mr. HYDE. Under Article 32, as to the operation of the court, would there be any disposition on the part of the Council, in establishing the conditions by which the court is made accessible to non-member states, to prevent a non-member state, say X, to which the court was not open of right, from having the right to use the principle of obligatory arbitration in bringing into the court the state of Y, a member state? Or is that too problematical at this time? I have been wondering how the last section of Article 32 might work as between a state which did not have access to the use of the court, being a non-member state, and a member state, or between a member state as against some other state.

Mr. ROOT. I assume that the conditions would not put the non-member state seeking access upon a different juridical basis from the other states, but that the conditions would rather relate to the way in which the state could get in than to its position as a litigant after it gets in—contribution toward expenses, for example, payment of its own share, perhaps a special agreement to abide by the judgment of the court, and things of that kind.

Mr. HYDE. There would be no disposition to prevent such states from utilizing the court?

Mr. ROOT. On the contrary, the idea was that it was very desirable to have the court apply universally.

Judge GRAY. The object of the provision was to invite that sort of access.

Mr. ROOT. If we are going to issue these proceedings and print them, suppose we have printed the plan as changed by the Council. Here is the cablegram of November 2, 1920, in answer to the cablegram from Dr. Scott requesting information as to just what changes had been made in the plan by the Council.

November 2, 1920.

JAMES BROWN SCOTT,
2 Jackson Place, Washington.

Reference telegram 30th October to Brussels meeting Council League Nations has taken concerning Permanent Court International Justice resolution following purport:

Council submits as its own to Assembly project prepared by Hague jurists committee with following exceptions: Articles 33 and 34 replaced by new texts keeping competence of court within limits in Covenant and treaties in force; French and English shall be the two languages of the court, both official; award shall be delivered in that of the two languages chosen by parties or if parties disagree in both languages, the court stipulating which text shall in doubt have authority; dissidents shall add reasoned statement of their opinion; expressly stipulated that award binding only on parties and only in the case decided; judges other than president shall obtain moderate annual salary plus important daily allowance when sitting; Secretariat instructed put remainder of Hague project in harmony with new text.

SECRETARY GENERAL LEAGUE NATIONS.

Now I suggest that, this being laid before the meeting of the Executive Council, in the report of these proceedings which is to be published, the text of the plan as here modified by the Council of the League of Nations be obtained and printed, so that we will have both the original plan and the text as modified.

Chairman STRAUS. Without objection, that recommendation will be carried out by the Secretary.

Whereupon, at 1:30 o'clock p.m. the meeting adjourned *sine die*.

OSCAR S. STRAUS,
Chairman.

JAMES BROWN SCOTT,
Recording Secretary.